

FOR THE DISTRICT OF COLUMBIA

ANONYMOUS,

Plaintiff

v.

Civil Action No. 75-1918

THOMAS F. McCORMICK,  
Public Printer, et al.,

Defendants

Washington, D. C.  
November 17, 1975

The above-entitled cause came on for Hearing on  
Plaintiff's Motion for a Temporary Restraining Order before  
the HONORABLE GERHARD A. GESELL, United States District Judge,  
at 11:00 a.m.

APPEARANCES:

THOMAS H. TRUITT, Esq.,  
DONALD T. BUCKLIN, Esq.,  
TERRY F. LENZNER, Esq.,  
Of: TRUITT, FABRIKANT, BUCKLIN & LENZNER  
Counsel for Plaintiff

FREDERICK A. O. SCHWARZ, Jr., Esq.,  
CHARLES B. KIRBOW, Esq.,  
JOHN H. BAYLY, Jr., Esq.,  
PATRICK SHEA, Esq.,  
CURTIS R. SMOTHERS, Esq.  
Counsel for Senate Select Committee to Study  
Governmental Operations with  
Respect to Intelligence Activities

COURT'S RULING

## APPEARANCES:

DAVID BUSHONG, Esq.,  
FREDERICK BARON, Esq.,  
Counsel for Senate Select Committee to Study  
Governmental Operations

ROBERT N. FORD,  
Assistant United States Attorney

VINCENT McCARTHY,  
General Counsel,  
ESSIE ABLOBE, Esq.,  
Counsel for Public Printer and Government  
Printing Office

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THE COURT: This is a complaint by a former officer of the CIA, who remains anonymous, naming the Public Printer, the Superintendent of Documents, the Government Printing Office, the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities and each of the distinguished Senators members of that Committee as Defendants.

The Court has today heard testimony in camera and oral argument from counsel on Plaintiff's application for a temporary restraining order.

Plaintiff seeks to have the Court enjoin the distribution of a report prepared by the Select Committee on the subject of assassinations, which is now in page proof form and will go to the printer shortly.

As its initial position, Plaintiff would have the Court strike from the report any reference to Plaintiff by name and any references in the report that may inferentially identify him. It asks for this relief both as to copies of the report which are to be distributed to members of the Senate by the Committee and to other copies of the report which presumably will later be available for public distribution.

As its ultimate and minimal position, Plaintiff requests the Court to delete its name from any copies of the report.

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which are to be publicly distributed, leaving other identifying indications as they now stand.

The actual text of the report has been presented to the Court which contains numerous references to Plaintiff by name and by his various positions. The report is in narrative form in great detail telling, in effect, the story of a number of alleged assassination plots.

It is the intention of the Select Committee, upon receipt of final printed bound copies of the report tomorrow, to present the report to the full Senate for its information in a closed session and thereafter to reveal the contents of the report by general public distribution.

There are certain facts which have been developed which are largely undisputed and which the Court finds.

Plaintiff is a retired Government employee who held a GS-14 position. He had somewhat limited policy or executive functions. He is a central figure in the report. He volunteered to appear before the Committee and ultimately was subpoenaed at the request of his counsel and use immunity was granted to him under the statute.

He testified in camera. No promise of anonymity was made to him.

The inquiry which involved Plaintiff was being conducted pursuant to Senate Resolution 21 of January 1975, which is an explicit, detailed resolution authorizing the

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Select Committee to inquire into intelligence activities

within the Executive Branch. The Committee has been strenuously engaged in the traditional function of Congressional Committee to examine into instances of mal-administration within the Executive Branch, looking toward the need for corrective legislation.

The report, as its text shows, has obviously been prepared with care. Upon various representations made by high officials of the CIA, the Committee has deleted some twenty names out of a total of thirty-two names found in the report which are considered sensitive.

While the Committee has no formal rules in determining when a name shall be used in the report and when it shall not be used, in general, the Committee -- and it is the Committee and not just the staff -- has considered the level of the individual within the organization, the degree of his responsibility, the number of assassination plots with which he has been involved, the possibility of harm. These criteria are responsible criteria.

The Committee has been conscious of a purpose to be informative in a credible way and desires to win both public and legislative acceptance of its recommendations, the two matters being inextricably intermingled.

Plaintiff has established that there is a real possibility

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of physical harm to himself if his name is revealed

in the manner the report contemplates. This harm could take the form of physical violence against him or physical retribution against members of his family. Because of the nature of the information contained, it is certain to arouse unstable radical and hostile domestic and foreign groups and the Court finds that the report increases his danger.

General representations by the President of the United States against publication of names have been made and the CIA, with the President's knowledge, has expressed specific concern for Plaintiff's well-being.

These facts have all been brought to the attention of the Committee which, by letter transmitted today to Plaintiff's counsel, indicated that the Committee is determined to go forward and publish.

Against these facts, the Court turns to the legal issues raised. These issues are novel in the sense that generally speaking Congressional Committees in a responsible manner have avoided life-and-death issues such as this may be by not publishing the names of individuals concerned.

The first question is whether the controversy is justiciable. The Court concludes, on the basis of *Doe v. McNillan*, *Gravel*, and the absolute immunity afforded in the recent *Eastland* Supreme Court decision, that it has absolutely no power of any kind, shape, form or description to edit,

requested from the public printer by the Committee to be used immediately in the legislative process of informing other members of the Senate and going forward with the recommendations that are contained in the last part of the report.

The only issue that the Court can consider and finds justiciable is the question of whether or not, under the facts and circumstances of this case, adequate showing has been made for the Court to place limitations upon the public distribution of the report.

The Court recognizes that this is largely theoretical since under modern-day circumstances, the leaking of reports by unknown sources to an avaricious press interested in the sensational is an everyday occurrence. The fact, however, that the report may become public does not justify this Court in refusing to intervene because its act may be futile, if on the showing made there appears to be a clear violation of Plaintiff's Constitutional right.

The Speech and Debate Clause does not pertain where public distribution of a Senate Committee report is involved, as *McMillan* teaches; and, therefore, the Court is called upon to deal with the merits of the public distribution aspects of this case.

Plaintiff suggests that sitting as a court of equity the Court must balance the facts as the Court has found them to be and urges that intervention is necessary to correct a

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clear and present danger of violence and to protect the common law and Constitutional rights of privacy, which it is claimed the anonymous Plaintiff holds.

The Court finds there is no right or privacy in the Plaintiff. A former Government official has no right of privacy vis-a-vis the Congress where his official conduct is under review and he has, personally, volunteered to cooperate with the Committee.

No other Constitutional right is present. We are not concerned with Plaintiff's right of free speech; nor are we concerned with any other right other than the right of privacy.

To the extent that there may be some residual of a right to privacy extant, the Court, of course, must weigh the value of that right to the individual against the public interest. The Court finds that the public interest greatly outweighs any private interest of the Plaintiff.

We are dealing first with a matter of major public concern. We are dealing with a Committee which is charged, among other things, with responsibility to examine into whether the Executive Branch has established adequate internal control and it is in this area that the conduct of Plaintiff is brought under particular review.

This is not, as the Court views it, a case of

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exposure for the sake of exposure alone. There is no actual



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threat of any criminal prosecution. The Court is obliged, on the record before it, to accept the bona fides of the Select Committee in its reasoned determination that the disclosure of the name will serve a legislative purpose. The Court cannot substitute its judgment for that of the Committee on a matter such as this unless it has before it such clear facts that by no reasoned stretch of the imagination can it be said that no proper legislative purpose will be served. There are no facts of this kind before the Court.

With some hesitancy, the Court feels obliged to call attention to the increasing concern among citizens of this country and among many members of the Judiciary with the tendency of some Committees of Congress to move far into the areas which our Constitution preserved for grand juries and to engage in legislative trials. A question of very delicate balance is involved in each case and the ultimate responsibility, of course, except in the most egregious situation, must rest with the Congress and the resort to the polls is perhaps the only cure for many excesses.

Extraordinary situations create extraordinary conditions. It is the Court's view that this particular subject of assassination by Government officials, intended or successful is an area that warrants substantial latitude to the Congress to bring forward to all members of the Congress and to the

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public the grave issues which undoubtedly the report is well

directed to.

I have before me an application for a temporary restraining order and, therefore, I state that the public interest, the lack of chance of success on the merits, and the absence of any clear Constitutional right which is infringed warrant denial of that motion.

It would appear from the nature of this proceeding and the time schedule that is involved that the issues will be largely moot by the time it would be possible for the Court to arrive at any consideration of a preliminary or permanent injunction. Perhaps it would be best, if counsel are agreed, to make these findings of fact and conclusions of law the final judgment in this matter and let any party that desires take its recourse at a higher level.

MR. TRUITT: Judge, that would be satisfactory for Anonymous.

I wonder if I may have an opportunity to request the Court to grant a stay until we can get upstairs or get the findings typed or however the administration might work out. We have notified the Clerk.

THE COURT: Are they waiting for you upstairs?

MR. TRUITT: I didn't do it personally. Perhaps Mr. Bucklin can respond.

MR. BUCKLIN: I was on the phone with the Clerk's  
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off when Your Honor came into the courtroom and I cut my

conversation short. I did talk to the Clerk. He referred me to his Deputy. I also advised him that I might be cut off because of Your Honor's return being imminent. He said he would advise his Deputy and make all necessary arrangements.

THE COURT: Then there is no need for a stay. You can go immediately upstairs. If the Court hears this matter either this afternoon or the first thing tomorrow morning upstairs, I rather doubt that there is any need for any stay on the part of this Court and I will not grant it.

It would seem to me that we ought to be sure we have the record together here in proper fashion. I think I perhaps have some of the original papers in chambers.

We ought to have a final order. With your agreement then, Mr. Truitt, I will say: It appearing that the issues in this case must be resolved by temporary restraining order and the Court having denied the temporary restraining order, the complaint is dismissed.

Is that satisfactory with you?

MR. TRUITT: Yes, it is, Your Honor.

THE COURT: Very well, I will prepare a simple order to that effect now.

If the Deputy Clerk will come back, I will make sure that those papers I have in chambers are available to go upstairs.

I very much appreciate the cooperation of counsel on both sides. This is a difficult case, as you well know, a troublesome case. I appreciate the fact that Plaintiff went to strenuous efforts to bring in knowledgeable witnesses and to get the paper work done in a short space of time. I also appreciate the fact that the Government legislative and other officials involved, instead of debating and arguing questions of procedure, and so forth, have come forward into Court to assist the Court in resolving it. That does not always occur but I think in this case it has helped bring the issues into focus and I want to thank the Public Printer and you, Mr. Schwarz, and the others concerned for your cooperation in this matter.

Thank you, gentlemen.

MR. SCHWARZ: It is a pleasure to appear before Your Honor. Thank you.

CERTIFICATE OF COURT REPORTER

I, Ida Z. Watson, certify that I reported the proceedings in the above-entitled cause on November 17, 1975 and that the foregoing Pages 1 to 11, inclusive, constitute the official transcript of the Court's Ruling.

*Ida Z. Watson*

TRANSMITTAL SLIP		DATE
TO: <i>ECC</i>		
ROOM NO.	BUILDING	
REMARKS: <i>Circulate</i> <i>[Signature]</i> <i>N</i> <i>K</i> <i>S</i> <i>A</i> <i>B</i>		
FROM:		
ROOM NO.	BUILDING	EXTENSION

FORM NO. 241  
1 FEB 55

REPLACES FORM 36-8  
WHICH MAY BE USED.

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